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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,301	12/12/2000	Robert C. Oswald	2275-010	3881

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EXAMINER

SAETHER, FLEMMING

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/734,301

Applicant(s)

OSWALD, ROBERT C.

Examiner

Flemming Saether

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

Claims 1-4, 8, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ditka. Ditka discloses a drive pin comprising a shank with a head (124) at one end, a "ballistic" tip (122) at the other end and a knurl formed as parallel spiral grooves (28) angled relative to the longitudinal axis of the shank. The angle being disclosed as between 0 and 45 degrees which includes the angles which are claimed. The shank includes a "base diameter" which is read as being larger than the grooves.

***Claim Rejections - 35 USC § 103***

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dove in view of Ditka and Resenberg. Dove discloses a drive pin in the environment as defined in the claims (ie. sheet material fastener) including spiral grooves (19) but, does not disclose the angle of the spiral grooves as claimed. Ditka disclose a drive pin including the angle of the spiral grooves relative to the longitudinal axis as described in the above however, the pin of Ditka is intended to use in a different environment (ie. masonry). Rosenberg is a linking reference which teaches the use of the same spiral grooved fastener in both environments. In view of the teaching of Rosenberg, the person of ordinary skill in the art would have recognized to angle the spiral grooves of

Dove as disclosed in Ditka in order to optimize both the insertion and retention of the pin. The specific sizes of the pin would have been recognized since it is well known to vary the sizes of pin fasteners depending upon the particular application.

### ***Response to Arguments***

Applicant argues that the reference to Ditka fails to disclose the *ballistic* tip since it merely describes a pointed tip for insertion into a predrilled hole and as such the tip would not be ballistic. In response, the examiner agrees with applicant's understanding of Ditka and how the instant invention is different. However, defining the tip as "ballistic" does not define over Ditka since there is nothing which would preclude the tip of Ditka, regardless of its shape, from being considered ballistic. In other words, "ballistic" does not impart any particular shape to the tip, as such the tip of Ditka is properly read as ballistic. Moreover, even the disclosure of the instant invention is not specific as to the shape of a ballistic tip other than it is "*preferably* bullet shaped" [emphasis added]. Furthermore, even the newly cited prior art which specifically describe the tip of the fastener as being "ballistic" include a myriad of design shapes.

The distinction as provided for by the ballistic tip as argued by applicant is more to an intended use or even more specifically to a method. Indeed, the difference between the instant invention and Ditka is in the way the fastener is used and not in its structure as is currently claimed. In that regard, applicant is reminded that the prior art

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only need to be capable of an intended use. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Applicant next argues that Ditka does not disclose the rib members (grooves) as having a diameter less than a *base diameter*. In response, the examiner disagrees. The "base diameter" as defined in the claim is simply an arbitrary value since it is given no reference point and as, in Ditka, the "base diameter" is read as being at a distance greater than the troughs between the ribs and the height of the ribs (or the grooves).

Again, the purpose of the grooves is an intended use of which the equivalent structure of Ditka would be capable as discussed above with regards to the tip.

Applicant next argues the rejection of claim 1-20 over the combination of Dove, Ditka and Rosenberg, again stressing that the applied prior art does not disclose a ballistic tip. In response, the examiner maintains that merely calling the tip "ballistic" does not define over the applied art for the same reasons as discussed above in reference to Ditka alone.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, all the references are nail type fasteners each providing an advantageous feature thus, the skilled artisan would have recognized that a combination of all the advantageous features would provide a single superior fastener.

### ***Conclusion***

In conclusion, the examiner maintains that the prior art as applied fairly meets the limits of the current claims. However, in view of applicant's focus of the *ballistic* tip, some new prior art has been cited for applicant's consideration which specifically uses the word "ballistic" in the description of the tip.

✓ **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

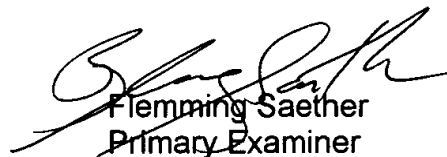
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 703-308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

  
Flemming Saether  
Primary Examiner  
Art Unit 3679

February 22, 2003